

IT IS FURTHER ORDERED that the clerk is directed to deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office, whenever such income becomes available for deduction in the investment so held and without further order of the court.

IT IS FURTHER ORDERED that counsel presenting this order must personally serve a copy thereof on the clerk or the chief deputy clerk prior to making the deposit.”

Absent personal service, the clerk is hereby relieved of any personal liability relative to compliance with this order.

4.2 Disbursements of Registry funds; Content of Order.

The clerk will disburse funds on deposit in the registry of the court only pursuant to court order. The disbursement order must contain a provision relieving the clerk from liability for loss of interest, if any, for early withdrawal of the funds. The order must state the name and taxpayer identification number for each party who is to receive funds and the percentage of the balance and interest each is to receive. Funds will be disbursed only after the time for appeal of the related judgment or order has expired, or upon approval by the court of a written stipulation by all parties.

Section 5: Mediation Panel Procedures

The following procedures detail the administration of the Mediation Program as well as the process for Mediation.

LBR 7016-11 governs Mediation.

7016-11. Mediation. Parties may participate in mediation pursuant to the provisions of the Administrative Procedures. Upon conclusion of the mediation:

- (a) If the parties reach agreement, the parties must designate a party to document the settlement.
- (b) The mediator must prepare and file, within 14 days, Local Form CSD 4004, indicating whether a settlement was reached, and if so, whether there was compliance with the settlement and mediation requirements of the Administrative Procedures.

5.1 List of Mediators

The court maintains a list of qualified persons who agree to serve as mediators in contested matters and adversary proceedings pending before the court.

5.2 Voluntary Mediation Panel

To volunteer for this program, a person should submit an application to the Clerk. The application must set forth the qualifications described in subsection (a) or (b) and must conform in format to Local Form CSD 4001, *APPLICATION TO JOIN VOLUNTARY MEDIATION PANEL*. A list of eligible mediators is available on the Court's website; the Clerk's Office; and/or from the Courtroom Deputy.

(a) Attorney Qualifications

In order to qualify for service on the Voluntary Mediation Panel, an attorney must certify to the court that the attorney meets the following minimum qualifications:

- the attorney is an active member of the State Bar of California and is duly licensed to practice before the courts of the State of California and the Federal courts for the Southern District of California;
- the attorney has been admitted to practice in a state court for at least 4 years; and
- the attorney has served as the attorney of record for at least 3 bankruptcy cases from commencement through conclusion (i.e.; confirmation of a plan or discharge) or has served as the attorney of record for a party in interest for at least 3 or more adversary proceedings or contested matters from commencement through completion (i.e.; judgment, order, or stipulated settlement); or has had other substantially equivalent bankruptcy experience.

(b) Non-Attorney Qualifications

In order to qualify for service on the Voluntary Mediation Panel, a non-attorney must certify to the court that the following qualifications are met:

- the person is a member of the panel of trustees or examiners maintained by the Office of the United States Trustee; or
- the person is a Certified Public Accountant in the State of California; and
- in addition, the person complying with the requirements of subsection (a) or (b) above must also demonstrate service to a bankruptcy estate in at least 10 asset estates as trustee, and/or in at least 10 cases as bankruptcy examiner or accountant for a trustee or debtor-in-possession from commencement through completion of such case; or has other substantially equivalent bankruptcy experience.

(c) Mediator Compensation

After completing a half-day mediation session, nothing herein prevents the parties, and the mediator, from agreeing that the mediator be compensated at an agreed upon hourly rate.

5.3 Assignment to Mediation

(a) A case may be assigned to mediation by order of the court at a status conference or other hearing. If a case is assigned to mediation, the parties attending the status conference must be presented with the current lists of eligible mediators. If the parties cannot agree, the court will appoint a mediator and alternates from the lists.

(b) Local Form CSD 4002, *ORDER APPOINTING MEDIATOR AND ASSIGNMENT TO MEDIATION*, must be used to assign a matter to mediation. The original will be retained in the court's file. The clerk will mail a copy to the mediator and to each party.

5.4 Mediation Procedure

(a) Time and Place

The mediator will fix the time and place for the mediation conference, and any adjourned session. The time and place selected must be reasonably convenient for the parties, and the parties must be given at least 14 days written notice of the initial conference. The conference must be scheduled as soon as practicable but in no event more than 45 days after the mediator has been notified of the appointment. The mediator may, upon written stipulation of the parties filed with the court, grant one continuance of the conference, provided that the continuance granted does not extend the date of the conference to a date more than 75 days after the mediator has been notified of the appointment.

(b) Submission of Case Summary

Each party must provide the mediator with a completed case summary in either a mediation letter or brief of the case. The case summary must describe the nature of the dispute; the evidence supporting that party's position as well as the evidence in opposition to that party's position; and a legal argument in support of that party's position. The completed case summary (either mediation letter or a brief) must be served on the mediator and all other parties not less than 7 calendar days prior to the date noticed for the mediation conference as set forth in subsection (a) above.

(c) Attendance and Preparation Required

The attorney who is primarily responsible for each party's case must personally attend the mediation conference and any adjourned sessions of that conference. The attorney for each party must come prepared to discuss the following in detail and in good faith:

- all liability issues;
- all damage issues; and
- the position of their client relative to settlement.

(d) Parties to Be Available

All individual parties who reside within the County of San Diego must personally attend the mediation conference unless excused by the mediator for cause. Parties, other than individuals, whose principal place of business is located in San Diego County, must have a representative appear with authority to settle. Individuals and other parties who neither reside in San Diego County nor have their principal place of business located therein, must be available for conference with their counsel by telephone although that party's attorney must be in attendance. The mediator must decide when the parties are to be present in the conference room.

(e) Failure to Attend

Willful or unexcused failure to attend the mediation conference must be reported to the court by the mediator and may result in the imposition of sanctions by the court.

(f) Proceedings Privileged

All proceedings or writings of the mediation conference, including the case questionnaire, mediator's settlement recommendation, plus any statement made by any party, attorney or other participant, must in all respects be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury or construed for any purpose as an admission against interest. No party will be bound by anything said or done at the conference unless a settlement is reached, in which event the agreement upon a settlement must be reduced to writing and will be binding upon parties to that agreement. Federal Rule of Evidence 408 applies herein. A report of a failure to attend a mediation conference does not fall within this privilege.

(g) Duty of Counsel

The client must be advised of the fact that the mediator is a qualified person and has volunteered to act as an impartial mediator, without compensation, in an attempt to help the parties reach an agreement and avoid the time, expense and uncertainty of trial. If the mediator makes any oral or written suggestions as to the advisability of a change in

any party's position with respect to settlement, the attorney for that party must promptly transmit that suggestion to the client.

(h) Duty of Mediator

The mediator will have the duty and authority to establish the time schedule for mediation activities, including a schedule for the parties to act upon the mediator's recommendation, having in mind that the purpose of this order is prompt dispute resolution. The mediator will have no obligation to make any written comments or recommendations, but may have the discretion to provide a written settlement recommendation in memorandum. No copy of any such memorandum will be filed with the clerk or made available in whole or in part, directly or indirectly, either to the court and/or the jury.

5.5 Procedure upon Completion of Mediation Session

Upon the conclusion of the mediation session where all parties are in attendance, the following procedures must be followed:

- (a) If the parties have reached an agreement regarding the disposition of the proceeding, the parties must designate a party to prepare a stipulation to dismiss, or enter a judgment on agreed terms, or continue the mediation session to a date convenient to all parties and the mediator. The party preparing the stipulation must submit the stipulation, once fully executed by all parties, to the court for approval.
- (b) The mediator must prepare and file with the Clerk, within 14 days, a Local Form CSD 4004, *MEDIATOR'S CERTIFICATE OF COMPLIANCE*, indicating whether a settlement was reached, and, if so, whether there was compliance with the settlement and mediation requirements of this rule.